Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Tenth Annual Report and Analysis of	)	
Competitive Market Conditions with	)	WT Docket No. 05-71
Respect to Commercial Mobile	)	
Radio Services	)	

REPLY COMMENTS OF LEAP WIRELESS INTERNATIONAL, INC.

Leap Wireless International, Inc., on behalf of itself and its affiliates and subsidiaries (collectively, "Leap"), hereby offers these reply comments in the above-captioned proceeding.[1]

I. LEAP'S SERVICE

Leap provides consumers with state-of-the-art mobile wireless services in a package targeted to meet the needs of those who are under-served by more traditional wireless service offerings. Leap's services, marketed under the "Cricket" brand name, offer a simple and affordable alternative to traditional wireless and landline service, allowing customers unlimited usage within their calling area for a flat monthly rate and with no signed contract required. Leap's services appeal to consumers who value predictable monthly bills and who make the majority of their calls from within their local areas, reducing the need for per-minute restrictions or roaming. By providing customers with a simple and affordable service, Leap provides wireless services to individuals who might not otherwise take advantage of the wireless market.

[1] *WTB Seeks Comment on CMRS Market Competition*, WT Docket No. 05-71, Public Notice, DA 05-487 (February 24, 2005).

Leap's customer demographics demonstrate its appeal to traditionally under-served consumers. Most of Leap's customers are low income: fully 64 percent have household incomes of less than $35,000 per year. 41 percent of Leap's customers are Hispanic or African-American. Many are credit-challenged, and could not qualify for traditional wireless services.

Likewise, the usage patterns of Leap's customers reflect the unique nature of its service. The average Leap customer uses 1,500 minutes per month, compared with the industry average of 600 minutes per month. With the average Leap customer talking for nearly an hour a day, every day, it would appear that they likely use their mobile phones as their primary phones. Indeed, a majority of Leap's customers have cut the cord entirely: over half do not subscribe to landline service at all.

The nature of Leap's service is as unusual as its customer demographics and usage patterns. Leap is able to offer its high-quality, low-cost mobile telephone service in large part because of savings it achieves in back-office functions. Thus, for example, Leap communicates with customers via SMS and through its website as much as possible, instead of sending correspondence through the mail. Likewise, Leap does not send new customers a "welcome package." Routine customer service is provided by an interactive voice response system, rather than a live operator, and specific calls are not itemized on a customer's bill. In these and various other ways, Leap's business model allows it to provide an attractive value proposition to consumers who have often been under-served by traditional wireless offerings.

II. LEAP'S MARKET POSITION

In August 2004, Leap emerged from Chapter 11 bankruptcy protection. At that time and in the course of a subsequent refinancing, Leap paid off all of its outstanding FCC debt. Leap is now generating substantial positive cash flow and has a strong balance sheet. Leap has positioned itself to continue providing high quality and affordable wireless service to it current customers, as well as to expand its customer base in the future. Leap currently provides wireless service in 39 markets in 20 states. As of June 30, 2004, Leap reported approximately 1.55 million customers across the country.

Leap is working hard to expand its offerings and improve its service in an effort to attract and retain subscribers. For example, Leap is in the process of implementing plans to provide customers with roaming capabilities. Leap has also increased its wireless footprint through the acquisition of four new licenses in FCC Auction 58 and through well-placed aftermarket acquisitions such as its planned (and applied for) expansion of service to Fresno, California. Through these expanded services and its expanded footprint, Leap is well positioned to continue to provide customers with high-quality services in the future, and to expand its reach, bringing additional competition to CMRS.

III. CMRS COMPETITION ISSUES

Leap agrees that competition in the CMRS market generally remains robust.2 The scope of services being offered to customers is expanding rapidly, as is the number of subscribers to such services. Carriers continue to reach out to consumers with new technology, services and pricing plans, and consumers continue to respond to such initiatives.3

These trends notwithstanding, Leap agrees with those commenters who urge the Commission to take note of certain issues that ultimately may have a substantial competitive impact on the CMRS market.

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[2] *See, e.g.*, Comments of CTIA-The Wireless Association, In the Matter of Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, WT Docket No. 05-71, filed March 28, 2005, at 1-2.

[3] *See id.*

A. Roaming

For years, Leap's service did not include the ability for subscribers to roam. Rather, the service was designed to resemble the simplicity and predictability of landline service, with an unlimited supply of minutes for one flat fee while in the local market area. In order to bring additional services, and to cater to those who need the ability to travel on occasion, Leap now is expanding its service offerings to provide its customers with roaming capabilities. These efforts to gain entry into the roaming market provide Leap with particular expertise in competitive issues associated with this market.

Similar to some other CMRS providers, Leap has experienced difficulty in negotiating reasonable – or even viable – terms for roaming contracts.4 Companies such as Leap are faced with limited choices for roaming partners.5 This, of course, is due to the limited number of CMRS licenses that are available in a given area, and to the FCC's laudable decision to allow carriers to adopt the air interface of their choosing. While this technological freedom has led to greater innovation and generally more efficient spectrum usage, it also leads to a fundamental incompatibility among carriers' systems (GSM, CDMA, and iDEN), which in turn shrinks the market for roaming partners. Today, there are only two national CDMA carriers and two national GSM carriers – and only Nextel uses iDEN. And in any given market, there are often similarly limited numbers of technologically-compatible carriers.

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[4] *See, e.g.*, Comments of Leaco Rural Telephone Cooperative, Inc., In the Matter of Tenth Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Radio Services, WT Docket No. 05-71, filed March 28, 2005, at 4.

[5] *See, e.g.*, Comments of Great Lakes of Iowa, Inc, In the Matter of Tenth Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Radio Services, WT Docket No. 05-71, filed March 28, 2005, at 1-2.

At the same time, the ability to roam has become more of a competitive necessity.[6] Leap's own shift from a pure local strategy to its new offering of limited roaming service demonstrates this trend. Likewise, numerous commenters show the importance of roaming to the viability of their own service offerings.[7] And the marketplace reality, as demonstrated by the sales and service offerings of the large national carriers, is that most consumers have come to expect the ability to roam – at least regionally, and generally nationwide.

The Commission should be cognizant of the potential for a competitive imbalance, and ultimately a market failure with respect to roaming. If a few large carriers are able unilaterally to set the terms for access to roaming networks, this could jeopardize the overall level of competition within the CMRS market. One or both carriers that use a given air interface could use their respective duopoly positions to deny access (or deny access on economically viable terms) to these essential roaming facilities. Indeed, the reported difficulty in obtaining roaming terms stands in contrast to the apparent ability of pure resale carriers to obtain viable terms – which may evidence a competitive significance to any unwillingness by facilities carriers to offer comparable terms to roaming partners. If facilities carriers are able to deny potential competitors access to an essential bottleneck facility, it would result in a decrease in the number of carriers that are able to provide viable services to consumers. The Commission therefore should be mindful of the effect that the availability of roaming services may have on competition.

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6 *See* Comments of The National Telecommunications Cooperative Association, In the Matter of WTB Seeks Comment on CMRS Market Competition, WT Docket No. 05-71, filed March 28, 2005, at 4.

7 *See, e.g.*, id.

B. Regulatory Resources

The Commission should also bear in mind that, while the level of competition in the CMRS market remains robust, this competitive level cannot be sustained if the Commission focuses its policies and resources on the needs of large carriers at the exclusion of smaller providers such as Leap. While the larger carriers present the Commission with challenging and newsworthy regulatory issues, pursuing those issues to the detriment of those facing smaller providers could cause harm to the smaller carriers and, ultimately, to the level of competition in the marketplace. While they may not have the immediate national market or news impact of the big carriers, the smaller CMRS providers enable the market to continue to operate competitively and efficiently. The elimination of smaller carriers from the market, or policies or priorities that disfavor those smaller carriers, would greatly reduce the robust level of competition which currently exists.

In particular, Leap is concerned that the Commission may tend to devote substantially more resources to large "high profile" transactions than it does to the smaller transactions engaged in by the likes of Leap. Multi-billion-dollar mergers and acquisitions are, to be sure, important events that the Commission should treat carefully and in a timely manner. But the Commission should also ensure that smaller transactions likewise receive the attention and staffing resources that are necessary to their timely resolution.
Perversely, regulatory delays and impediments may have a disproportionately large impact on smaller carriers.[8] While larger companies may have the operational and financial tolerance for delays, timely resolution of issues and applications can be of vital importance to a small

[8] *See* Comments of Public Service Communications, In the Matter of Tenth Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Radio Services, WT Docket No. 05-71, filed March 28, 2005, at 9-10.

company struggling to compete. The Commission should ensure that it devotes adequate resources to the needs of smaller carriers such as Leap; it should not treat non-national providers as regulatory "second class citizens."

IV. CONCLUSION

Leap believes that the CMRS market remains highly competitive from the consumer standpoint. This competition has led to the rapid development of new services and more favorable pricing plans to consumers. However, carriers within the market have informally been divided into two tiers: the big carriers who possess national market power, and the small carriers who do not. If the competitive level of the CMRS market is to be sustained, the Commission should work to understand the disparity between the two tiers and must assist the smaller companies in their efforts to keep the market competitive.

Respectfully submitted,

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